ADMINISTRATIVE RULES SUBCOMMITTEE
OF THE
ARKANSAS LEGISLATIVE COUNCIL

Thursday, August 24, 2023
10:00 a.m.
Room A, MAC
Little Rock, Arkansas

A. Call to Order

B. Reports from the Executive Subcommittee Concerning Emergency Rules

C. Reports from ALC Subcommittees Concerning the Review of Rules

D. Rules Filed Pursuant to Ark. Code Ann. § 10-3-309

1. ARKANSAS ETHICS COMMISSION (Graham Sloan)

a. SUBJECT: Rules on Campaign Contribution Limit

DESCRIPTION: Pursuant to Ark. Code Ann. § 7-6-203(i), the Arkansas Ethics Commission (the "Commission") is required to establish the maximum campaign contribution limit at the beginning of every odd-numbered year. Based on the percentage certified to the Federal Election Commission by the Bureau of Labor Statistics, announced on February 2, 2023, as 1.65284 percent, the Commission must raise the contribution limit from $2,900 to $3,300. The Commission is mandated in Ark. Code Ann. § 7-6-203(i) to promulgate rules identifying the adjusted contribution limit. The purpose of this rule is to establish a campaign contribution limit and give the public clear guidance on that limit. The presumed intent of the mandated adjustment is to keep the contribution limit in line with the rising costs of running a campaign for public office.

Likewise, Act 455 of 2023 changed the contribution amount that a political action committee may receive per calendar year from a single contributor from $5,000 to $10,000. The definition of "approved political action committee" needs to be amended in these rules to reflect the changes in Act 455.

PUBLIC COMMENT: A public hearing was held on June 16, 2023. The public comment period expired on June 16, 2023. The Commission provided the following summary of comments it received and its responses thereto:

On May 19, 2023, Ms. Roberta Stoddard of North Little Rock Arkansas noted to the Commission that Act 455 of 2023 (approved April 4, 2023) revised the definition of "approved political action committee" (PAC), which is a defined term in the Rules on Campaign Contribution Limit. Act 455 amended the annual contribution limit to a PAC from $5,000 to $10,000, per single contributor. The Commission voted to incorporate this change into the proposed amended rules.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The Commission indicated that the amended rule does not have a financial impact.

LEGAL AUTHORIZATION: Pursuant to Ark. Code Ann. § 7-6-203(i), the Arkansas Ethics Commission shall establish the maximum campaign contribution limit by rule as follows:
(1) The adjusted campaign contribution limit shall be calculated from a base amount of two thousand dollars ($2,000) as of January 1, 2015;
(2) The contribution limits shall be adjusted at the beginning of each odd-numbered year in an amount equal to the percentage certified to the Federal Election Commission by the United States Bureau of Labor Statistics under 52 U.S.C. § 30116(c) as existing on January 1, 2015;
(3) If the amount after adjustment is not a multiple of one hundred dollars ($100), the Arkansas Ethics Commission shall round the amount to the nearest multiple of one hundred dollars ($100); and
(4) The Arkansas Ethics Commission shall promulgate rules identifying the adjusted contribution limit. *See* Ark. Code Ann. § 7-6-203(i).

In light of Act 455 of 2023, changes were made to the definition of "approved political action committee." Act 455 of 2023, which was sponsored by Representative David Ray, amended the law concerning contribution limits to political action committees, campaign finance law, and portions of Initiated Acts I of 1990 and 1996. *See* Ark. Code Ann. § 7-6-201(1)(a)(ii), *as amended by* Act 455 of 2023.

2. DEPARTMENT OF COMMERCE, ARKANSAS ECONOMIC DEVELOPMENT COMMISSION (Tucker Brackins, Renée Doty)

a. SUBJECT: Arkansas Tourism Development Act

DESCRIPTION: The Arkansas Economic Development Commission ("AEDC") is amending the Arkansas Tourism Development Act rule to include changes enacted by Act 652 of 2023. The amended rule will allow AEDC to administer the Natural State Initiative Pilot Program ("NSIPP")

and will allow the creation of Natural State Initiative Opportunity Zones ("Zones"). The pilot program will promote and grow Arkansas's outdoor recreation industry and recruit new recreation businesses to the state.

As background, The Arkansas Tourism Development Act provides state sales tax credits and income tax credits to approved companies operating a qualified tourism attraction project. Act 652 of 2023 amended and expanded the incentive program to create NSIPP. The program will be developed, implemented, and administered by AEDC in consultation with the Department of Parks, Heritage, and Tourism.

The proposed amended rule:

- Creates the Natural State Pilot Program to encourage the growth of Arkansas's outdoor recreation industry and encourage the growth and recruitment of outdoor recreation businesses in Arkansas.
- Sets criteria for designating Natural State Initiative Opportunity Zones (Zones).
- Requires that a Zone be located within, and up to 1/8th of a mile outside the boundaries of, a state park, a cultural or historic site, or a cultural or educational center.
- Designates four Zones within the allowed boundaries of Queen Wilhelmina State Park, Petit Jean State Park, Pinnacle Mountain State Park, and the Delta Heritage Trail State Park.
- Allows qualified tourism attraction projects that locate in a designated Zone to receive tax incentives allowed under the Tourism Development Act.
- For a company's project in a Zone to be eligible it must have a minimum investment of $500,000, or a minimum investment of $250,000 if the project is located in a designated high unemployment county.
- Adds definitions and makes various technical corrections.

PUBLIC COMMENT: A public hearing was held concerning this matter on July 7, 2023. The public comment period expired on July 15, 2023. The agency received no comments.

Suba Desikan, an attorney with the Bureau of Legislative Research, asked the following questions and received the following responses thereto:

1. Throughout the rule, the word "Director" appears to be replaced with "Secretary." However, there appear to be several instances where it was inadvertently not changed. Could you please review the markup and clean copy to ensure all changes intended in this respect are reflected correctly? **RESPONSE:** Upon review changes were made to both markup and clean copy as follows:

- Markup §IV(c)(4)(A)[pg 8] inserted Secretary ~~Director~~; revised on pg 8 of clean copy.
- Markup §IV(c)(9) [page 9] inserted Secretary ~~Director~~; this was correct on clean copy.
- Markup §IV(d) inserted Arkansas Economic Development in front of Commission's on page (9). This was inadvertently deleted during the drafting process. Revised clean copy on pg 9 and removed unnecessary extra spacing.
- Clean §VI(a)(1) [pg 10] removed extra spacing on line 4.
- Markup §VI(a)(7) inserted [pg 10] of the Arkansas Economic Development Commission and Secretary ~~Director~~; clean copy §VI(a)(7) [page 10] revised with same language.
- Markup §VI(b)(5)(E) lines 9 on page 12 inserted the Arkansas and Commission; clean copy revised on page 12.

2. §II(o) – What is the source of the definition of "qualified amusement park?" **RESPONSE:** The source of the definition is Ark. Code Ann. § 15-11-511(a).

3. §II(p) – The definition of "tourism attraction" adds restaurants located within the Natural State Initiative Opportunity Zone. However, it also adds the words "brick and mortar" in front of restaurants. Why was this language added? **RESPONSE:** To clarify that the intent of the legislation was to include permanent restaurant structures and facilities as opposed to various temporary types.

4. §VIII(c) – Concerning the four locations that were designated as zones, could you please explain why these areas were chosen? **RESPONSE:** The four locations were determined jointly by the director of the Arkansas Economic Development Commission and the Secretary of Parks, Heritage and Tourism in consultation with the Natural State Advisory Council. Sites were evaluated by criteria to ensure geographic diversity and the potential for economic development opportunities established by Act 652 of 2023 at Ark. Code Ann. §15-44-512(e) as well as criteria established in section VIII(b) of this proposed rule. In particular, AEDC believes the four proposed zones have the greatest potential for immediate economic development. Given that the initiative is a pilot program, achieving beneficial results sooner will enable the agency to determine if the program should be recommended for expansion in future legislative sessions.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that the amended rule does not have a financial impact.

LEGAL AUTHORIZATION: Act 652 of 2023, which was sponsored by Senator Bart Hester, amended the Arkansas Tourism Development Act. Pursuant to the Act, the Director of the Arkansas Economic Development Commission shall establish the Natural State Initiative Opportunity Zones through the promulgation of rules in accordance with the Administrative Procedure Act. *See* Ark. Code Ann. § 15-11-512(e)(3), *as amended by* Act 652 of 2023.

3. DEPARTMENT OF COMMERCE, DIVISION OF WORKFORCE SERVICES (David McCoy, Tucker Brackins)

a. SUBJECT: Amendment to Arkansas TANF State Plan

DESCRIPTION: The Department of Commerce, Division of Workforce Services proposes amendments to its State Plan for Title IV-A of the Social Security Act: Temporary Assistance for Needy Families (TANF) Program. The Arkansas TANF State Plan was revised to comply with the Consolidated Appropriations Act of 2022 that amended section 402(a) of the Social Security Act (42 U.S.C. 602(a)) by requiring a new certification for state TANF agencies related to providing information to victims of sexual harassment or survivors of domestic violence, sexual assault, or stalking. The new required certification was added to the following sections of the State Plan:

- Page 3, Certification #9
- Page 17, Section 4.2, NOTE

The following were changes that were made to the rule subsequent to the public comment period, but were non-substantive and *de minimis* or typographic in nature requiring no second public notice comment:

- Page 2 of 46 and page 4 of 46, removed Asa Hutchinson as Executive Officer of the State and replaced it with Sarah Huckabee Sanders to reflect the current administration.
- Beginning on page 2 of 46, the Revised Date was changed from 2022 to 2023 to reflect the current year.
- Section 3.3 on page 12 of 46 was changed to be consistent with Department of Human Services Rules which had been promulgated and became effective subsequent to the public notice of this TANF Rule.
- Attachment 1 on page 46 of 46 was updated to reflect current job titles in the organizational flow chart.

PUBLIC COMMENT: There was no public hearing held for this rule. The public comment period expired January 14, 2023. The agency indicated that it received no public comments.

Jason Kearney, an attorney with the Bureau of Legislative Research, asked the following questions and received the following responses:

(1) The proposed rule changes reference part, but not all, of Section 402(a)(8) of the Social Security Act. Did the agency determine that the language in Sections 402(a)(8)(A)(iii) and 402(a)(8)(B), concerning screening procedures and definitions, was not to be implemented into the Arkansas TANF State Plan? **RESPONSE:** Section 4.2 of the State Plan was revised to incorporate the language in 402(a)(8)(A)(iii). The screening procedure for victims of domestic violence has been in effect since the inception of the State program; however the section was revised to specifically reference victims of sexual harassment and survivors of sexual assault, domestic violence, or stalking. We have not included federal definitions for crimes/issues of domestic violence in the State Plan. The legal definitions for domestic violence, sexual harassment, sexual assault, stalking, etc. vary by state and lie outside of the scope of the Administration for Children and Families. As such, each TANF Block grant administrator is required to adhere to the State law in this regard and not the federal law. As required, we have outlined the special provisions that apply to survivors and victims.

(2) Act 832 of 2023, § 14, repealed Arkansas Code Annotated § 20-76-438(b)(2) and transferred the administration of the Transitional Employment Assistance Program and the Arkansas Work Pays Program from the Department of Commerce to the Department of Human Services. In light of that Act, what is the Department's stance on its authority to promulgate this amendment? **RESPONSE:** Per our conversation, during the 2023 legislative session, when Act 832 was passed, DWS was in the process of promulgating the rule at issue. Further, at this same time, DWS and Commerce agreed that DWS would continue its efforts to promulgate the rule with the intent to have it promulgated prior to July 1, 2023. However, the rule was not promulgated by July 1, 2023. Accordingly, we continued our efforts to promulgate the rule and have now presented it to ALC. DHS is aware of our efforts and supported Commerce through this process.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicates that the proposed rules have no financial impact.

LEGAL AUTHORIZATION: During the pendency of the rule change and prior to July 1, 2023, Arkansas Code Annotated § 20-76-438(b)(2) provided that the Division of Workforce Services was authorized to administer the Temporary Assistance for Needy Families (TANF) block grant and the services funded thereunder. Act 832 of 2023, § 14, repealed this language and transferred the administration of the Transitional Employment Assistance Program and the Arkansas Work Pays Program from the Department of Commerce to the Department of Human Services. Pursuant to § 1 of the Act, the transfer does not affect the orders, rules, regulations, directives, or standards made or promulgated by the Department of Commerce before the effective date of the Act, July 1, 2023, and the orders, rules, regulations, directives, or standards of Act 832, § 1, shall continue with full force and effect until amended or repealed under authority given by law. *See* Act 832, § 1.

The agency states that the rule is required to comply with federal law, specifically, Section 402(a) of the Social Security Act (42 U.S.C. § 602(a)), as amended by the Consolidated Appropriations Act of 2022.

4. DEPARTMENT OF HEALTH, STATE BOARD OF HEALTH (Laura Shue, items a, b, c; Dr. Naveen Patil, item a; Connie Melton, item b; Shane David, item c)

a. SUBJECT: Rules Pertaining to Reportable Diseases

DESCRIPTION: It is proposed to modify the Rules Pertaining to Reportable Diseases as follows:

- Nationally notifiable conditions added:
  - Leptospirosis (added nationally in 2014, was removed off AR list and needs to be added back)
- Conditions newly defined nationally:
  - Non-pestis Yersiniosis (includes species in addition to enterocolitica)
  - Cryptococcosis: Cryptococcus is a ubiquitous fungal pathogen that causes meningitis or pneumonia. It has been associated with outbreaks in the Northwest United States and in Arkansas. A consensus case definition was recently developed by CSTE.
- Conditions newly proposed to be added at the state level:
  - Acute Flaccid Myelitis: Uncommon but serious neurologic condition that causes muscle weakness, sometimes leading to permanent paralysis. This is not nationally notifiable, but CDC relies on clinician recognition and health department reporting of suspected AFM cases to learn more about AFM and what causes it.

- Alpha-Gal Syndrome: This is an emerging health issue in the Southern United States that presents as a delayed allergic reaction to ingestion of mammalian meats. It appears to be potentiated by bites of the lone star tick (the most common tick in Arkansas). A consensus case definition was recently developed by CSTE.
- Animal Bites: This is necessary to assess the burden of bites as well as monitor and assure appropriate rabies testing of the biting animals and prophylaxis of both the animals and humans. Animal bites are mandated to be reported in most states and in another area of Arkansas Rules. It is proposed to be added here for consistency and searchability.
- Monkeypox: This is an emerging infectious disease that is spread mostly through close, intimate contacts with someone who has monkeypox; it currently is spreading across several countries that don't normally report monkeypox, including the United States.
- Multisystem inflammatory syndrome (MIS) is a rare but serious condition associated with COVID-19 in which different body parts become inflamed, including the heart, lungs, kidneys, brain, skin, eyes, or gastrointestinal organs. It can affect children (MIS-C) and adults (MIS-A).
- Multisystem Inflammatory Syndrome in Children (MIS-C): Multisystem inflammatory syndrome in children (MIS-C) is a rare but severe condition in children and adolescents infected with SARS-CoV-2, the virus that causes COVID-19. This is not nationally notifiable, but CDC relies on clinician recognition and health department reporting of suspected MIS-C cases to learn more about it.
- Multisystem Inflammatory Syndrome in Adults (MIS-A):Like children, adults who have been infected with the virus that causes COVID-19 can develop symptoms of MIS-A days to weeks after getting sick.

- Conditions that need modification based on CDC recommendations:
  - Blood Lead: The health department follows the U.S. Centers for Disease Control and Protection (CDC's) recommended blood lead level (BLL) values to treat children with blood lead levels that are higher than most U.S. children's levels. CDC has updated its blood lead reference value (BLRV) from 5 micrograms per deciliter (µg/dL) to 3.5 µg/dL in response to the Lead Exposure Prevention and Advisory Committee (LEPAC) recommendation made on May 14, 2021.

    The BLRV is based on the 97.5th percentile of the blood lead level (BLL) distribution among children 1-5 years old in the U.S. from the two most recent cycles of data from the National

Health and Nutrition Examination Survey (NHANES). Thus, based on NHANES data from 2015-2018, CDC accepted the LEPAC recommendation to update the BLRV to 3.5 μg/dL.

Since CDC encourages local and state officials to help communities use the lowered reference value to determine the BLL required for case management and environmental investigation in Arkansas, we request this update be reflected in the ADH Reportable Disease list.

- Conditions that need modification based on changes in testing/reporting:
  - Carbapenem resistant Enterobacterales (CRE): Proposing that carbapenem resistant Enterobacterales (CRE) is updated to infections caused by carbapenemase producing organisms (CPO). Right now, our rules and regs is only CRE which doesn't encompass all the CPOs that could be encountered. This change would also reflect how CSTE is updating the case definition for CRE and would require facilities to report carbapenem-resistant Enterobacterales (CRE), carbapenemase-resistant Pseudomonas aeruginosa (CRPA), and carbapenem-resistant Acinetobacter baumannii (CRAB).

    This shouldn't negatively impact facilities or reference laboratories. The State Public Health Lab (SPHL) and regional AR Lab Network have the capacity to perform carbapenemase testing for no charge. The reference labs are already forwarding potential CPOs (Enterobacterales, Pseudomonas, and Acinetobacter) to our SPHL for testing and the same can be said about most hospitals. This change would align to what they are already doing. Also, if a new carbapenemase would be identified, then it would be on our reportable disease without making additional changes.
  - Candida auris: Proposing that we drop Candida haemulonii from the condition list. For C. auris, C. haemulonii was commonly misidentified for C. auris. Since MALDI-TOF databases have been updated and this is not a current issue. Most hospitals are sending isolates to the State Public Health Lab for rule out currently at no charge for testing. As of right now, we are getting few reports of potential C. auris/ C. haemulonii and have not identified C. auris in Arkansas.
  - Carbapenemase producing organisms (CPO) was listed on part A of Section V. Disease and Conditions Section but needs to be listed in this section as infections caused by Carbapenemase producing organisms and then listed as Carbapenemase producing organisms in section V part D.

  - Coronavirus Disease 2019 (COVID-19 caused by SARS-CoV-2): Proposing we specify this disease separately as reportable; previously listed on reportable disease list as novel Coronavirus.
  - Coccidioides immitis was listed on part A of Section V. Disease and Conditions Section but needs to be listed as the disease in this section as Coccidioidomycosis (caused by Coccidioides).
  - Cryptococcus was listed on part A of Section V. Disease and Conditions Section but needs to be listed as the disease in this section as Cryptococcosis.
  - Glanders was currently listed on Section V. Disease and Conditions, part D, which instructs submitting isolates of the agent but needs to be listed on part A. Notifiable Disease and Condition.
  - Melioidosis was listed on both part A and D of Section V. Disease and Conditions. Removed from part D which instructs regarding isolate submission.
- Other changes:
  - Change in reporting instructions to include preferred electronic reporting using a HL7 feed or reporting portal, phone call with updated numbers, and a fax with updated reporting form.

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on November 19, 2022. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that this rule has no financial impact.

LEGAL AUTHORIZATION: "Power is conferred on the State Board of Health to make all necessary and reasonable rules of a general nature for: [t]he protection of the public health and safety; . . . [t]he suppression and prevention of infections, contagious, and communicable diseases; [and t]he proper enforcement of quarantine, isolation, and control of such diseases[.]" Ark. Code Ann. § 20-7-109(a)(1)(A), (C), (D).

b. **SUBJECT: Rules for Hospitals and Related Institutions in Arkansas**

DESCRIPTION:

Background

Pursuant to Ark. Code Ann. §§ 20-9-201 et seq., the Board of Health has authority to promulgate Rules for Hospitals and Related Institutions and the Department implements them. These rules establish criteria for minimum standards for licensure, and operation and maintenance of hospitals and related institutions in Arkansas that is consistent with current trends in patient care practices. These standards are not static and are subject to periodic revisions in the future as new information and changes in patient care trends become apparent.

Proposed Revisions to Current Rules

The proposed rule amendments implement Act 59 of 2023 to create a licensure type for rural emergency hospitals. *See* Ark. Code Ann. § 20-9-224 (Supp. 2023). Governor Sanders signed Act 59 of 2023 on February 13, 2023, which enacted the legislation with its emergency clause.

The following changes are proposed:

Section 3: Definitions

- Insert Paragraph S to define "Rural Emergency Hospital"
- Insert Paragraph T to define "Rural Emergency Hospital Services"

Section 4: Licensure And Codes

- Insert requirement for rural emergency hospitals must be licensed in accordance with these Rules.

Section 7: General Administration

- Revised Paragraph G, 7 to apply requirements for risk-assessed all hazards disaster plan to apply to rural emergency hospitals.

Section 76: Physical Environment; Electrical Standards

- Revised Paragraph F, 2 to correct a reference from "inpatient" to "patient".

Section 84: Rural Emergency Hospital

- Insert Section 84 regarding regulations for rural emergency hospitals and which particular sections of these Rules for Hospitals and Related Institutions apply to rural emergency hospitals.

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on June 16, 2023. The agency received the following comment and provided the following response:

Commenter's Name: Bob Moore, FACHE, Interim CEO, Helena Regional Medical Center

COMMENT: Many Arkansas hospitals since the pandemic have found themselves struggling financially to the point of possible closure if a new means of reimbursement or changes to the reimbursement system are not found. One of the ways to keep rural hospitals afloat is the Rural Emergency Hospital (REH) designation, however, many hospitals would not qualify under the current federal and state legislation due to bed size. HB 1127 and Act 59 specifically excludes hospitals of greater than 50 beds from applying for REH status even though most hospitals interested in REH status, staff or operate less than 50 beds. Modification to Act 59 language to state, operating/staffed beds, versus licensed beds, would eliminate that issue. Also, if a hospital did not reduce its bed size to under 50 beds before December 27, 2020, they do not qualify for REH status. I am the CEO of Helena Regional Medical Center and the only pathway to the future for this hospital is to become a Rural Emergency Hospital except we cannot apply because we are licensed for 155 beds. However, we have had an average daily census of less than 14 patients for the past 10 years. Also, the hospital did not meet the bed reduction date of December 27, 2020 to reduce its bed size to under 50. Excluding hospitals like Helena Regional from becoming an REH will leave many rural communities without access to healthcare in their counties. Please consider making immediate changes to the federal and state REH guidelines so we can keep our rural hospitals operating in Arkansas. Thanks for your consideration.

RESPONSE: As noted in the public comment, Act 59 of 2023 specifically limits eligibility under Section 5 of the Act to only healthcare facilities previously licensed as either a critical access hospital or a general hospital with less than fifty licensed beds (and either in a county in a rural area or deemed to be located in a rural area). The proposed revisions to the Rules for Hospitals and Related Institutions are in compliance with Act 59, and no changes will be made.

Lacey Johnson, an attorney with the Bureau of Legislative Research, asked the following questions and received the following responses:

1. Section 84.D.2 of the proposed rules states that a rural emergency hospital must not exceed an annual per patient stay of 24 hours. Where does the 24-hour limit come from?

RESPONSE: Act 59 Pg 2 lines 32-43 states "Rural emergency hospital services" means the following services provided by a rural emergency hospital that do not require more than twenty-four (24) hours on average in a rural emergency hospital;. Additionally, this is a requirement Federal Conditions of Participation for Rural Emergency Hospitals published in CMS QSO -23-07-REH on January 26, 2023, with an effective date of January 1, 2023, states "that do not exceed an annual per patient average length of stay of 24 hours."

2. Act 59, § 3(13)(C) requires a rural emergency hospital to maintain "an emergency department that is staffed twenty-four (24) hours per day and seven (7) days per week with a physician, nurse practitioner, clinical nurse specialist, or physician assistant[.]" I see that the proposed rules require a rural emergency hospital to maintain a 24/7 staff of "individuals competent in the skills needed to address emergency care" who "must be able to receive patients and activate the appropriate medical resources to meet the care needed by the patient[.]" However, I also see that the proposed rules require a clinician, MD, DO, PA, NP, or CNS "with training or experience in emergency care [to be] at all times and immediately available by phone or radio contact and available on-site within 30 minutes." Under the rules, is a rural emergency hospital considered "staffed" by one of the individuals listed in Act 59 if those individuals are available by phone/radio and can be onsite within 30 minutes?

RESPONSE: Federal Conditions of Participation for Rural Emergency Hospitals published in CMS QSO -23-07-REH on January 26, 2023, with an effective date of January 1, 2023, allows for those individuals to be available by phone or radio and available on-site within in 30 minutes.

This rule was filed on an emergency basis and was reviewed and approved by the Executive Subcommittee on May 18, 2023. The proposed effective date for permanent promulgation is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that this rule has no financial impact.

LEGAL AUTHORIZATION: This rule implements Act 59 of 2023. The Act, sponsored by Representative Lee Johnson, created the Rural Emergency Hospital Act and authorized the licensure of rural emergency hospitals by the Department of Health. "The State Board of Health shall adopt rules establishing the minimum standards for the establishment and operation of rural emergency hospitals in accordance with [the statute], including licensure of rural emergency hospitals." Ark. Code Ann. § 20-9-224(g), *as amended by* Act 59, § 5(g).

c. SUBJECT: Rules Pertaining to the List of Controlled Substances

DESCRIPTION: The proposed amendments to the List of Controlled Substances are as follows:

1. Schedule I, (b), (11) is an item that has been marked for clean-up.
2. AH-7921, MT-45 and U-47700 are Schedule I controlled substances. To follow DEA, controlled substance code numbers have been set forth opposite of each substance. Schedule I, (b), (67), Schedule I, (b), (70) and Schedule I, (b), (71).
3. Isotonitazene. The DEA has placed this opioid analgesic into Schedule I because it has no recognized medical use. This drug would be included as Schedule I to follow DEA. Schedule I, (b), (97).
4. Zipeprol. The DEA has placed this opioid analgesic into Schedule I because it has no recognized medical use. This drug would be included as Schedule I to follow DEA. Schedule I, (b), (98).
5. Methoxetamine, MXE. 2-(ethylamino)-2-(3-methoxyphenyl)cyclohexan-1-one. The DEA has placed this hallucinogenic substance into Schedule I because it has no recognized medical use. This drug would be included as Schedule I to follow DEA. Schedule I, (d), (54).
6. Schedule I, (f), (1), (viii) is an item that has been marked for clean-up.
7. Amineptine. The DEA has placed this stimulant into Schedule I because it has no recognized medical use. This drug would be included as Schedule Ito follow DEA. Schedule I, (f), (1), (xii).
8. Mesocarb. The DEA has placed this stimulant into Schedule I because it has no recognized medical use. This drug would be included as Schedule I to follow DEA with a subsequent numbering change. Schedule I, (f), (1), (xiii).
9. The items listed below are Schedule I controlled substances. To follow DEA controlled substance code numbers have been set forth opposite of each substance listed below. Schedule I, (f), (2), (vii) through (xvi).
    - 4-methyl-N-ethylcathinone (4-MEC)
    - 4-methyl-alpha-pyrrolidinopropiophenone (4-MePPP)
    - Alpha-pyrrolidinopentiophenone (Alpha-PVP)
    - 1-(1,3-benzodioxol-5-yl)-2-(methylamino)butan-1-one (Butylone) and this item has been marked for clean-up.
    - 2-(methylamino)-1-phenylpentan-1-one (Pentedrone)
    - 1-(1,3-benzodioxol-5-yl)-2-(methylamino)pentan-1-one (Pentylone, bk-MBDP) and this item has been marked for clean-up.
    - 4-fluoro-N-methylcathinone (4-FMC; Flephedrone)

- 3-fluoro-N-methylcathinone (3-FMC)
- 1-(naphthalen-2-yl)-2-(pyrrolidin-1-yl)pentan-1-one (Naphyrone)
- Alpha-pyrrolidinobutiophenone ([Alpha]-PBP)

10. 1-(1,3-benzodioxol-5-yl)-2-(ethylamino)pentan-1-one, (N-Ethylpentylone) is a Schedule I controlled substance. This item has been marked for clean-up. Schedule I, (f), (2), (xviii).
11. 2-(ethylamino)-1-phenylhexan-1-one. N-Ethylhexedrone, Alpha-Ethylaminohexanophenone. The DEA has placed this synthetic cathinone into Schedule I because it has no recognized medical use. This drug would be included as Schedule I, to follow DEA. Schedule I, (f), (2), (xxi).
12. 1-phenyl-2-(pyrrolidin-1-yl)hexan-1-one. Alpha-Pyrrolidinohexanophenone, Alpha-PHP. The DEA has placed this synthetic cathinone into Schedule I because it has no recognized medical use. This drug would be included as Schedule I, to follow DEA. Schedule I, (f), (2), (xxii).
13. 2-(ethylamino)-1-(4-methylphenyl)pentan-1-one. 4-Methyl-alpha-ethylaminopentiophenone, 4-MEAP. The DEA has placed this synthetic cathinone into Schedule I because it has no recognized medical use. This drug would be included as Schedule I, to follow DEA. Schedule I, (f), (2), (xxiii).
14. 1-(4-methylphenyl)-2-(pyrrolidin-1-yl)hexan-1-one. 4′-Methyl-alpha-pyrrolidinohexiophenone, MPHP. The DEA has placed this synthetic cathinone into Schedule I because it has no recognized medical use. This drug would be included as Schedule I, to follow DEA. Schedule I, (f), (2), (xxiv).
15. 1-phenyl-2-(pyrrolidin-1-yl)heptan-1-one. Alpha-Pyrrolidinoheptaphenone, PV8. The DEA has placed this synthetic cathinone into Schedule I because it has no recognized medical use. This drug would be included as Schedule I, to follow DEA. Schedule I, (f), (2), (xxv).
16. 1-(4-chlorophenyl)-2-(pyrrolidin-1-yl)pentan-1-one. 4′-Chloro-alpha-pyrrolidinovalerophenone, 4-chloro-alpha-PVP. The DEA has placed this synthetic cathinone into Schedule I because it has no recognized medical use. This drug would be included as Schedule I, to follow DEA. Schedule I, (f), (2), (xxvi).
17. [^{123}I]ioflupane and [^{18}F]FP–CIT have been identified as items specifically removed from schedules of the controlled substance Act. Language has been updated in Schedule II, (b), (4) to follow DEA. Schedule II, (b), (4) (i) through (iii). Updated language will reflect the following:

> *Coca leaves (9040) and any salt, compound, derivative, or preparation of coca leaves, (including cocaine (9041) and ecgonine (9180) and their salts, isomers, derivatives and*

*salts of isomers and derivatives), and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include: **

*(i) Decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine. **

(ii) [^{123}I]ioflupane; or

(iii) [^{18}F]FP–CIT.

18. Schedule II, (b), (5), is an item marked for clean-up.
19. Schedule II, (f), (1) is an item that has been marked for clean-up.
20. Schedule III, (c), (10), is an item marked for clean-up.
21. Schedule III, (f), specific prefatory language in anabolic steroids section is removed indicating Items 1-28 and (9-1991) is removed and each specific substance that fits this designation will be identified by date separately, however; the controlled substance code number will remain in current position.
22. Schedule III, (f), (13) added language indicating Methandienone also known as Methandrostenolone.
23. Daridorexant. The FDA approved this drug for use in treatment of insomnia. This drug would be included as Schedule IV, to follow DEA. Schedule IV (c), (60).
24. Serdexmethylphenidate. The FDA approved this drug for use in treatment of attention deficit hyperactivity disorder. To follow DEA, this drug would be included as Schedule IV with subsequent numbering corrections to following this section. Schedule IV, (e), (12).
25. Lorcaserin and Solriamfetol are moved within Schedule IV, (e) to alphabetize the list. Schedule IV, (e), (5) and Schedule IV, (e), (14).
26. Ganaxolone. The FDA approved this drug for use in treatment of seizures associated with cyclin-dependent kinase-like 5 (CDKL5) deficiency disorder (CDD) in patients 2 years of age and older. This drug would be included as Schedule V to follow DEA. Schedule V, (e), (6).
27. Delta-1 cis or trans tetrahydrocannabinol, and its optical isomers is a Schedule VI controlled substance. The Arkansas State Crime Laboratory requested to include Delta-9 cis or trans tetrahydrocannabinol as an additional name of this substance to reflect an alternative chemical numbering system. Schedule VI, (a), (5), (i), (A), (a).
28. Delta-6 cis or trans tetrahydrocannabinol, and its optical isomers is a Schedule VI controlled substance. The Arkansas State Crime Laboratory requested to include Delta-8 cis or trans tetrahydrocannabinol as an additional name of this substance to

reflect an alternative chemical numbering system. Schedule VI, (a), (5), (i), (A), (b).

29. Delta-3,4 cis or trans tetrahydrocannabinol, and its optical isomers is a Schedule VI controlled substance that has been marked for clean-up. The Arkansas State Crime Laboratory requested to include Delta-6a,10a cis or trans tetrahydrocannabinol as an additional name of this substance to reflect an alternative chemical numbering system. Schedule VI, (a), (5), (i), (A), (c).
30. THJ-2201, AB-PINACA and AB-CHMINACA are Schedule VI controlled substances. To follow DEA, controlled substance code numbers have been set forth opposite of each substance. Schedule VI, (a), (5), (ii), (P), Schedule VI, (a), (5), (xi) (U) and Schedule VI, (a), (5), (xi), (V).
31. 5-Fluoro-MDMB-PICA and 5F-CUMYL-PINACA are Schedule VI controlled substances. Schedule VI, (a), (5), (xi), (Q) and Schedule VI, (a), (5), (xi), (Z). To follow DEA, a DEA Controlled Substance Code Number has been set forth opposite of each substance.
32. 5F-EDMB-PINACA. Ethyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate. The DEA has scheduled this synthetic cannabinoid because it has no recognized medical use. This drug would be included as Schedule VI. Schedule VI, (a), (5), (xi), (GG).
33. FUB-144. (1-(4-fluorobenzyl)-1H-indol-3- yl)(2,2,3,3-tetramethylcyclopropyl)methanone. The DEA has scheduled this synthetic cannabinoid because it has no recognized medical use. This drug would be included as Schedule VI. Schedule VI, (a), (5), (xi), (HH).
34. FUB-AKB48. N-(adamantan-1-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide. The DEA has scheduled this synthetic cannabinoid because it has no recognized medical use. This drug would be included as Schedule VI. Schedule VI, (a), (5), (xi), (II).
35. Documentation referencing Director is replaced with Secretary, as applicable, throughout the list in compliance with state law.
36. The controlled substance list has been updated to reflect dates of promulgation beside several listed substances.
37. As a general administrative update to the controlled substance list, clerical changes are reflected to the outline numbers within specific sections.
38. Pursuant to Act 629, concerning language in Schedule VI of the List of Controlled Substances, is amended, (a), (2), (ii). The language additions for Tetrahydrocannabinol are as followed:

> *(2) Tetrahydrocannabinols, unless the tetrahydrocannabinol is:*
> *(ii) Not more than three-tenths of one percent (0.3%) of*

delta-9 tetrahydrocannabinol in the hemp-derived cannabidiol on a dry weight basis as verified by a nationally accredited laboratory for quality, purity and accuracy standards; and

39. Pursuant to Act 629, substances and language in Schedule VI of the List of Controlled Substances is amended, Page 28, (a), (5), (i), (A). Tetrahydrocannabinols shall include the following substance additions and language, Page 28, (a), (5), (A) (d) through (i):

(i) Tetrahydrocannabinols:
*(A) Tetrahydrocannabinols, including without limitation the following: ***
d) Delta-10 cis or trans tetrahydrocannabinol, and its optical isomers;
e) Delta-8 tetrahydrocannabinol acetate ester;
f) Delta-9 tetrahydrocannabinol acetate ester;
g) Delta-6a,10a tetrahydrocannabinol acetate ester;
h) Delta-10 tetrahydrocannabinol acetate ester;
i) A product derived from industrial hemp that was produced as a result of a synthetic chemical process that converted the industrial hemp or a substance contained in the industrial hemp into Delta-8, Delta-9, Delta-6a, 10a or Delta-10 tetrahydrocannabinol included in their respective acetate esters.

40. Substances added to the Controlled Substances List pursuant to Act 629 of 2023 shall have the following effective dates:
    - For persons who are under twenty-one (21) years of age, the effective date shall be the effective date of Act 629 of 2023; and,
    - For persons who are twenty-one (21) years of age or older, the effective date shall be August 1, 2023

PUBLIC COMMENT: A public hearing was held on this rule on June 22, 2023. The public comment period expired on June 22, 2023. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that this rule has no financial impact.

LEGAL AUTHORIZATION: The Department of Health administers the Uniform Controlled Substances Act and has authority to add substances to the Controlled Substances List and to delete or reschedule "any substance enumerated in a schedule[.]" Ark. Code Ann. § 5-64-201(a)(1)(A)(i). "The Secretary of the Department of Health shall revise and republish the schedules annually." Ark. Code Ann. § 5-64-216. If a substance is controlled under federal law, the Department "shall similarly control the substance" unless the Secretary objects to inclusion within thirty days of publication in the Federal Register of a final order designating a substance as a controlled substance. Ark. Code Ann. § 5-64-201(d).

A portion of this rule implements Act 629 of 2023. The Act, sponsored by Senator Tyler Dees, prohibited industrial hemp that contains certain delta tetrahydrocannabinol substances and included certain tetrahydrocannabinol in the list of Schedule VI controlled substances.

E. Agency Updates on the Status of Outstanding Rulemaking Pursuant to Act 595 of 2021

1. Department of Agriculture (Wade Hodge)

2. Department of Corrections (Lindsay Wallace)

3. Department of Education (Andrés Rhodes)

4. Office of Arkansas Lottery (Brent Standridge)

F. Request for the Exclusion of Act 504 of 2023 from Reporting Requirements of Act 595 of 2021

G. Adjournment